

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

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S. Seanah Dixon,

Plaintiff,

v.

Stacy Barrett, et al.,

Defendants.

Case No. 2:22-cv-01412-APG-DJA

**Order**

This is a civil rights action arising out of events that took place while Plaintiff was incarcerated at Ely State Prison and High Desert State Prison. Plaintiff sues Defendants for damages, declaratory relief, and injunctive relief, alleging claims for deliberate indifference to serious medical needs and retaliation. Plaintiff now moves for a court order requiring the U.S. Marshals Service to serve Defendants Sandra Gobler and Steven Salkoff (ECF No. 62), for appointment of counsel (ECF No. 63), to reinstate her motion to extend time (ECF No. 103), and for the Court to review her motion for appointment of counsel on an emergency basis (ECF No. 116).

Because the Court finds that Plaintiff has demonstrated good cause for another opportunity to serve Gobler and Salkoff, it grants Plaintiff's motion for an order regarding service. (ECF No. 62). Because the Court finds that Plaintiff has demonstrated that she did not intend to withdraw her previous motion to extend time, the Court will grant her motion to reinstate that motion and consider the merits of the motion to extend time. (ECF No. 103). Because the Court finds that Plaintiff has demonstrated exceptional circumstances, the Court grants her motion for appointment of counsel. (ECF No. 63). Because the Court grants the motion for appointment of counsel, it denies Plaintiff's emergency motion regarding the motion for appointment of counsel as moot. (ECF No. 116).

1 **I. Discussion.**

2 **A. *The Court grants Plaintiff's motion for a Court order regarding service (ECF***  
 3 ***No. 62).***

4 Plaintiff moves for the Court to order the U.S. Marshals Service to attempt service on  
 5 Defendants Gobler and Salkoff. Plaintiff explains that the Attorney General filed Gobler and  
 6 Salkoff's last known addresses under seal and that Plaintiff then submitted two USM 285 forms  
 7 indicating that those addresses were under seal. (ECF No. 62 at 5, 7). However, Plaintiff  
 8 received notice that the U.S. Marshals Service could not serve the process because Plaintiff did  
 9 not provide addresses. (*Id.* 11). No party filed a response.

10 The Court grants Plaintiff's motion and will grant her an extension to serve Gobler and  
 11 Salkoff. Plaintiff may rely on the U.S. Marshals Service for service under Federal Rule of Civil  
 12 Procedure 4(c)(3). Additionally, under Federal Rule of Civil Procedure 4(m), if a plaintiff shows  
 13 good cause for failure to serve a defendant within ninety days of the complaint being filed, the  
 14 Court must extend the time for service for an appropriate period.

15 In its prior order granting Plaintiff's motion for service on Gobler and Salkoff, the Court  
 16 gave Plaintiff until July 3, 2023, to serve Defendants. Plaintiff filed the instant, renewed motion  
 17 for service on June 6, 2023. The Court notes that, on Plaintiff's USM 285 forms, Plaintiff wrote  
 18 that each address was "filed under seal with court," but Plaintiff did not specify *where* the U.S.  
 19 Marshals Service could find Gobler and Salkoff's addresses under seal. The Court will thus give  
 20 Plaintiff one more opportunity to attempt service on these Defendants. Plaintiff must fill out new  
 21 USM-285 forms and send them directly to the U.S. Marshals Service. In the blank space asking  
 22 for each Defendant's address, Plaintiff must specify that the address is filed under seal in Case  
 23 No. 2:22-cv-01412-APG-DJA at ECF No. 35.

24 **B. *The Court grants Plaintiff's motion for appointment of counsel (ECF No. 63)***  
 25 ***and denies Plaintiff's emergency motion (ECF No. 116) as moot.***

26 Plaintiff moves for the Court to appoint counsel, asserting that her case is factually  
 27 complex, that she lacks the ability to prosecute it because she is in administrative segregation, and  
 28 that the case will involve conflicting testimony. (ECF No. 63). No party responded to the

1 motion. Plaintiff filed an affidavit in support of her motion. (ECF No. 82). Plaintiff also filed an  
2 emergency motion for the Court to review her motion for appointment of counsel, explaining that  
3 she has gone to the emergency room several times, is experiencing medical problems, and is  
4 waiting on medical procedures that will impact her ability to prosecute this case. (ECF No. 116).

5 A litigant does not have a constitutional right to appointed counsel in 42 U.S.C. § 1983  
6 civil rights claims. *Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981). Under 28 U.S.C.  
7 § 1915(e)(1), “[t]he court may request an attorney to represent any person unable to afford  
8 counsel.” However, the court will appoint counsel for indigent civil litigants only in “exceptional  
9 circumstances.” *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009) (§ 1983 action). “When  
10 determining whether ‘exceptional circumstances’ exist, a court must consider ‘the likelihood of  
11 success on the merits as well as the ability of the petitioner to articulate his claims *pro se* in light  
12 of the complexity of the legal issues involved.’” *Id.* “Neither of these considerations is  
13 dispositive and instead must be viewed together.” *Id.*

14 The Court grants Plaintiff’s motion to appoint counsel. The Court finds Plaintiff’s  
15 situation to constitute exceptional circumstances. Plaintiff has explained that, because she is in  
16 administrative segregation, she lacks the research capabilities other inmates have and cannot  
17 interview other inmates who are witnesses. She adds that she cannot readily access her medical  
18 records, which are central to this case, and her records total over 3,000 pages. Plaintiff’s case will  
19 also likely require expert testimony because her medical treatment is at issue, and she asserts that  
20 her records are inaccurate reflections of her treatment. The Court thus finds that Plaintiff lacks  
21 the ability to articulate her claims *pro se* in light of the legal complexities involved. This is  
22 especially true considering Plaintiff’s recent emergency motion explaining that upcoming medical  
23 procedures will impede her ability to engage in this case. Additionally, Plaintiff has  
24 demonstrated likelihood of success on the merits sufficient for the Court to grant her motion.  
25 Specifically, the Court has partially granted Plaintiff’s motions for injunctive relief, which  
26 analysis requires a finding of likelihood of success on the merits. (ECF No. 88). Because the  
27 Court grants Plaintiff’s motion to appoint counsel, it denies her emergency motion for review of  
28 that motion as moot. (ECF No. 116).

1           ***C. The Court grants Plaintiff's motion to reinstate her motion to extend (ECF No. 103).***

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3           Plaintiff moves to reinstate her previously filed motion to extend time filed at ECF No. 95.

4           (ECF No. 103). Plaintiff asserts that the Court misconstrued her motion to withdraw filed at ECF

5           No. 96 to withdraw ECF No. 95. (ECF No. 103). No party has responded to Plaintiff's motion to

6           reinstate. Because the Court finds that Plaintiff did not intend to withdraw her motion to extend

7           time filed at ECF No. 95, it grants Plaintiff's motion to reinstate (ECF No. 103) and will consider

8           the merits of her motion to extend time (ECF No. 95).

9           In her motion to extend time, filed on August 10, 2023, Plaintiff explains that she has not

10          received Defendants' responses to her discovery requests. (ECF No. 95). Plaintiff thus seeks to

11          extend all discovery deadlines to sixty days after she receives Defendants' responses to discovery.

12          The Court granted Plaintiff's previous motion to extend time on May 18, 2023, and set the

13          following deadlines (ECF No. 57):

14                  Amend pleadings/add parties:	August 28, 2023
15                  Discovery cutoff:	September 27, 2023
16                  Discovery motions:	October 11, 2023
17                  Dispositive motions:	October 30, 2023
18                  Joint pretrial order:	November 29, 2023

19          The Court notes that no party has responded to Plaintiff's motion to reinstate, constituting

20          their consent to the Court granting it under Local Rule 7-2(d). Additionally, Plaintiff has shown

21          good cause for the extension, explaining that she has not yet received discovery necessary to

22          prosecute her case. The Court has also granted Plaintiff's motion for appointment of counsel and

23          any appointed counsel will need time to conduct discovery. Plaintiff has also filed a motion to

24          compel discovery. (ECF No. 115). The Court thus grants Plaintiff's motion to reinstate and will

25          extend all deadlines<sup>1</sup> for sixty days from the date of this order. To the extent the parties require

26          more time, they may file a stipulation or motion to extend these deadlines.

27          \_\_\_\_\_

28          <sup>1</sup> Plaintiff's motion to extend time seeks to extend "all discovery deadlines." (ECF No. 95 at 2). Because Plaintiff moved to extend before the deadline to amend pleadings and add parties

1           **IT IS THEREFORE ORDERED** that Plaintiff's motion for a Court order regarding  
2 service by the U.S. Marshals Service (ECF No. 62) is **granted**.

3           **IT IS FURTHER ORDERED** that the Clerk of Court is kindly directed to deliver the  
4 following to the U.S. Marshals Service: (1) the summonses issued to Sandra Gobler and Steven  
5 Salkoff (ECF No. 58); (2) two copies of the complaint (ECF No. 5); and (3) a copy of this order.

6           **IT IS FURTHER ORDERED** that the Clerk of Court is also kindly directed to mail  
7 Plaintiff two copies of the Form USM-285.

8           **IT IS FURTHER ORDERED** that Plaintiff shall have until **October 19, 2023** to send  
9 the U.S. Marshals Service the required USM-285 forms. Within twenty-one days after receiving  
10 a copy of the USM-285 forms back from the U.S. Marshals Service showing whether service has  
11 been accomplished, Plaintiff must file a notice with the Court identifying whether the defendant  
12 was served. If Plaintiff wishes to have service again attempted on an unserved defendant, the  
13 Plaintiff must file a motion with the Court identifying the unserved defendant and specifying a  
14 more detailed name and/or address for said defendant or whether some other manner of service  
15 should be attempted.

16           **IT IS FURTHER ORDERED** that Plaintiff shall have forty-five additional days from the  
17 date of this order—until **November 13, 2023**—within which to serve Defendants.

18           **IT IS FURTHER ORDERED** that Plaintiff's motion for appointment of counsel (ECF  
19 No. 63) is **granted**.

20           **IT IS FURTHER ORDERED** that this case shall be referred to the Pro Bono Program  
21 adopted in Second Amended General Order 2019-07 for the purpose of screening for financial  
22 eligibility (if necessary) and identifying counsel willing to be appointed as *pro bono* counsel for  
23 Plaintiff. Plaintiff is reminded that she must comply with all deadlines currently set in her case  
24 and there is no guarantee that counsel will be appointed. If counsel is found, an order appointing  
25 counsel will be issued by the Court, and Plaintiff will be contacted by counsel.

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27 \_\_\_\_\_  
28 expired, the Court construes Plaintiff's motion as seeking to extend all deadlines, including the  
deadline to amend pleadings and add parties.

1           **IT IS FURTHER ORDERED** that Plaintiff's emergency motion for review (ECF No.  
2 116) is **denied as moot**.

3           **IT IS FURTHER ORDERED** that Plaintiff's motion to reinstate (ECF No. 103) is  
4 **granted**.

5           **IT IS FURTHER ORDERED** that the following deadlines shall govern discovery:

6           Amend pleadings/add parties:	October 27, 2023
7           Discovery cutoff:	November 27, 2023
8           Discovery motions:	December 11, 2023
9           Dispositive motions:	December 29, 2023
10          Joint pretrial order:	January 29, 2024

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13          DATED: September 28, 2023



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DANIEL J. ALBREGTS  
UNITED STATES MAGISTRATE JUDGE